the provisions of this section, held, that there was substantial compliance with subsection (1) of this section and the High Court would not be justified in interfering in revision on the ground that the court had no proof that the bond had been forfeited."

In this case the court had not drawn up proceedings against the principal and the sureties under the section. It seems to me that evidence should have been led producing the actual bail bond and stating that the bailors were the persons who had entered into the bond. They should then have been given an opportunity to cross-examine the witness who produced the bail bond and to show cause why their recognizance should not be forfeited. They should have been invited to go into the witness box and state their case, if they so wished, calling any further evidence which they required. This had not been done.

There is no general right of appeal. Appellate jurisdiction is solely a creation of statute and it extends only as far as the words of the statute necessarily require. (*Khor Swee Khim* v. *Public Prosecutor*) [1]. The appellate criminal jurisdiction of the High Court consists, by virtue of section 26 of the Courts of Judicature Act, 1964, of the hearing of appeals from subordinate courts according to the provisions of the law for the time being in force relating to criminal procedure, that is in the present case the Criminal Procedure Code. Under section 307 a person who has not been a party to the case in the first place has no right of appeal. (*Koay Ban Siew* v. *Public Prosecutor*) [2]. However, by virtue of the provisions of section 405, all orders made under section 404 are appealable to the court of a judge.

Accordingly I quashed the order of the magistrate forfeiting the bond and ordered the case to be remitted to the magistrate for him to hear evidence on oath and come to a decision in compliance with the provisions of section 404(i) of the Criminal Procedure Code.

Order of magistrate quashed.

Case remitted for taking of evidence.

Solicitors: *Pillai, Lim, Lee & Hwang.*

PUBLIC PROSECUTOR v. ZAINI

[ACr.J. (Kulasekaram J.) May 27, 1964]

[Singapore — District Court Criminal Appeal No. 33 of 1964]

Penal Code s. 193 — False evidence — Gravity of offence — Assessment of — Appropriate sentence — Leniency.

Criminal Procedure — Sentence — Previous conviction for similar offence — Enhancement of sentence.

Muslims Ordinance, 1957, s. 61 — Muslim Marriage and Divorce (Amendment) Rules, 1961 — Making false statement to kathi in order to contract second marriage.

In offences under section 193 of the Penal Code and in allied offences, for assessing the gravity of the offence and to decide what would be an appropriate sentence, the trial judge should have, amongst other matters, directed his mind as to why the accused made the false statement, what he sought to achieve by giving the false evidence and to what extent he succeeded by his acts and what harm, if any, he caused to anybody.

In this case the respondent was charged with giving false evidence in proceedings before a kathi, which are deemed to be judicial proceedings within the meaning of Chapter XI of the Penal Code by section 61 of the Muslims Ordinance, 1957. The respondent in his application for marriage had declared before the kathi that he was a bachelor when in fact he was a married man. He pleaded guilty and although he had a previous conviction for similarly giving false evidence to a kathi, he was sentenced to 1 day's imprisonment and a fine of $150. The Public Prosecutor appealed against this sentence on the ground that it was manifestly inadequate.

Held: (1) by deliberately not making a true disclosure of the facts before the kathi the respondent had achieved what precisely the law sought to prevent. In such circumstances to impose a lenient punishment would clearly bring the law into contempt and encouarge others to likewise flout the law;

(2) in the circumstances of this case and seeing that the respondent had had a previous conviction for a similar offence where he had been treated lightly but appeared to have not profited by it, the sentence imposed on him was manifestly inadequate.

CRIMINAL APPEAL.

Ahmad Ibrahim, State Advocate-General, in person.

Respondent in person.

Cur. Adv. Vult.

Kulasekaram J.: In this case the respondent was charged with giving false evidence before a kathi when he applied to get married. The respondent stated to the kathi in a judicial proceeding that he was a bachelor when in fact he was a married man. He pleaded guilty to an offence under section 193 of the Penal Code.

The learned district judge imposed a sentence of 1 day's imprisonment and a fine of $150 and the Public Prosecutor now appeals against this sentence on the ground that the sentence is manifestly inadequate.

The learned district judge in imposing this sentence says that the High Court has consistently imposed lenient sentences in similar cases. He further says that it appeared to him that none of the respondent's two wives had been adversely affected by this offence. There is nothing in the narrative of the facts to justify the latter conclusion which the learned district judge has drawn. What is more the learned district judge only directed his mind to these two facts and appears to have considered nothing else.

In my view, in offences under section 193 of the Penal Code and in allied offences, for assessing the gravity of the offence and to decide what would be an appropriate sentence, the learned

district judge should have, amongst other matters, directed his mind as to why the respondent made this false statement, what did he seek to achieve by giving this false evidence and to what extent did he succeeed by his acts and what harm, if any, did he cause to anybody.

These are matters of paramount importance in this type of cases for assessing the gravity of the offence. The subsequent sections of the Penal Code, *viz* sections 194 and 195 provide for graver offences of the same genus and take into consideration these matters.

I regret to say that the learned district judge did not advert to these matters at all.

The prosecution gave a very sketchy narrative of the facts which merely supported a conviction for an offence under section 193 of the Penal Code. The facts show that perjury simpliciter had been committed by the respondent. Had the learned district judge properly directed his mind to the matters I have mentioned above he would no doubt have ferretted out from the prosecution more facts regarding this case before imposing any sentence on the respondent.

At hearing of this appeal the State Advocate-General who appeared in person submitted that had the respondent stated the truth to the kathi then under the provisions of the Muslims Ordinance and Muslim Marriage and Divorce (Amendment) Rules of 1961, the kathi would have to refer the matter to the chief kathi who would then hold an inquiry and amongst other matters he would inquire whether the respondent was in a position to maintain another wife.

The learned State Advocate-General further submitted that these provisions in the Muslims Ordinance and Muslim Marriage and Divorce (Amendment) Rules of 1961 were not inimical to the tenets of the law of Islam but merely sought to regularise and enforce those principles.

The facts in the present case show that had the chief kathi held such an inquiry he would in all likelihood have refused permission to the respondent to contract a second marriage.

The learned State Advocate-General stated that the respondent at the time he sought to contract this marriage was 23 years old, had a wife and two children by her and in addition another child by a previous marriage not in existence then and was only in receipt of a salary of $36 per week. These facts were not disputed by the respondent.

On my further questioning the respondent he admitted, with commendable candour on this occasion, that he made this false statement because he wanted to marry the girl in question. He further said that the girl did not know that he was married and had she known that fact then she would have refused to go through with the marriage.

It would appear that the respondent by deliberately not making a true disclosure of the facts before the kathi achieved what precisely the law sought to prevent. In such circumstances to impose a lenient punishment would, as the learned State Advocate-General correctly submitted, clearly bring the law into contempt and encourage others to likewise flout the law in gay abandon.

As the Muslims Ordinance was introduced only a few years ago the courts may have taken a lenient view in the first few cases as the offenders may not have been fully aware of the provisions of that ordinance but now there is no longer any room for such leniency. Besides the respondent here had a previous conviction for a similar offence where he had been treated lightly but appears to have not profited by it.

The learned State Advocate-General gave statistics to show that in recent years only a few applications, after due inquiry, had been granted for Muslim males to contract a second marriage. He also gave statistics to show that this type of offence with which respondent was charged is now on the increase.

I therefore consider the sentence here is manifestly inadequate. The appeal is allowed and the sentence is altered to one of imprisonment for 6 months.

Appeal allowed. Sentence enhanced.